

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF WEST VIRGINIA  
CLARKSBURG**

**UNITED STATES OF AMERICA,**

Plaintiff,

**v.**

**Criminal Action No. 1:17-CR-51  
(KEELEY)**

**JAMES L. LAURITA, JR.**

Defendant.

**UNITED STATES' NOTICE OF KENNEDY EVIDENCE AND RULE 404(b) EVIDENCE**

Now comes the United States of America by William J. Powell, United States Attorney for the Northern District of West Virginia, and Jarod J. Douglas, Assistant United States Attorney for said district, and hereby provides notice that it intends to introduce evidence at trial pursuant to United States v. Kennedy, 32 F.3d 876, 886 (4th Cir. 1994) and Rule 404(b) of the Federal Rules of Evidence.

Specifically, the United States intends to introduce evidence that the conduit contribution program at Mepco, LLC also included contributions to candidates for state office, in direct contravention of West Virginia Code, Section 3-8-5a(f) ("No person may make any contribution except from his, her or its own funds, unless such person discloses in writing to the person required to report . . . the name, residence, mailing address, major business affiliation, and occupation of the person which furnished the funds to the contributor"). In the interest of judicial economy, however, the United States intends to introduce only a small amount of evidence in this regard, which can be organized in the following three categories.

First, the United States intends to elicit from the secretary of the defendant and each of the eight conduit-witnesses only general testimony that the program included state candidates.

Second, a number of the exhibits which the United States intends to introduce concerning federal candidates will also contain information about state officials, typically on the same page.

Third, the United States intends to elicit testimony from the secretary of the defendant and each of the eight-conduit-witness and introduce approximately fifteen (15) exhibits concerning the defendant's hosting of multiple fundraisers for Earl Ray Tomblin in August and September 2012.<sup>1</sup> About half of these exhibits consists of e-mails. One exhibit consists of an e-mail to the defendant from his secretary, which includes as an attachment a sample fundraiser invitation from the Tomblin campaign containing the verbatim language of West Virginia Code, Section 3-8-5a(f), as quoted above. Another exhibit consists of an e-mail to the defendant from his secretary, which includes as an attachment a proposed contribution form containing the same language. A few other exhibits consist of e-mails between the defendant and his secretary during the drafting process of the Mepco invitations and contribution forms, which did not include the statutory language. The other half of these exhibits consists of evidence of the actual contributions to the Tomblin Campaign from the defendant and his executives.

The United States submits that the above-outlined evidence is both necessary and reliable to prove the defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident concerning the contributions to federal candidates. See United States v. Curran 1993 WL 137459, \*23-24 (E.D. Pa. Apr. 28, 1993) (rejecting, based on a thorough limiting instruction, a challenge to evidence of state conduit contributions as 404(b) evidence), judgment vacated on other grounds, 20 F.3d 560 (3d Cir. 1994). In addition, the United States

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<sup>1</sup> On November 30, 2017, the undersigned sent an e-mail to counsel for the defendant, which identified these exhibits by Bates Number.

argues that such evidence is “necessary to complete the story of the crime on trial.” See Kennedy, 32 F.3d at 886.

The United States will be filing a proposed limiting instruction regarding this evidence.

Respectfully submitted,

WILLIAM J. POWELL  
UNITED STATES ATTORNEY

By: /s/ Jarod J. Douglas  
Jarod J. Douglas  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I, Jarod J. Douglas, Assistant United States Attorney for the Northern District of West Virginia, hereby certify that the foregoing UNITED STATES' NOTICE OF KENNEDY EVIDENCE AND RULE 404(b) EVIDENCE was filed electronically with the Clerk of the Court using the CM/ECF system this 12th day of January 2018, which will send notification of said filing to the following individual(s):

John A. Carr, Esq.  
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By: /s/ Jarod J. Douglas  
Jarod J. Douglas  
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